



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Sinclair Radio Laboratories, Inc.--
Reconsideration
File: B-227474.2
Date: November 10, 1987

DIGEST

1. Request for reconsideration of untimely protest based on significant issue exception is granted and case decided on the merits where it is alleged by small business that it was denied opportunity to compete because agency failed to advise it of procurement under agency's previously established procedure.
2. Protest of multiple award Federal Supply Schedule contractor, whose prior contract contained renewal clause, that it failed to receive notice of solicitation is denied where agency synopsisized procurement in Commerce Business Daily and mailed solicitation to protester. Renewal clause confers no additional protection to protester.

DECISION

Sinclair Radio Laboratories, Inc., requests that we reconsider our June 16, 1987, dismissal of its protest of the General Services Administration's (GSA) failure to advise it of solicitation No. GSC-KESV-000-44 covering antennas, duplexers and transmitter combiners.

In its initial protest, Sinclair stated that it had been supplying such items under GSA contracts since 1982, and contract renewal was always initiated by GSA. As an example, Sinclair noted that in 1986 GSA contacted it by letter, enclosing a standard form for executing a contract modification to renew the contract and directions for submitting a new offer to the solicitation if Sinclair did not wish to renew under existing terms. Sinclair stated it did not receive any communication from GSA during the spring of 1987 regarding contract renewal, and thus contacted GSA on May 13, 1987. GSA informed Sinclair that the time for submitting offers had expired in April, and that Sinclair's late offer would not be considered. Sinclair protested to our Office on June 15, complaining that GSA had not notified Sinclair of its intentions regarding renewal of Sinclair's contract, or that the closing date for offers was to be earlier in 1987 than it was in 1986.

We dismissed Sinclair's protest as untimely because Sinclair was advised by GSA on May 13 that its offer would not be considered, but did not protest GSA's actions to our Office until June 15. Our Bid Protest Regulations require that such a protest be filed not later than 10 working days after the basis of protest is known or should have been known, whichever is earlier. 4 C.F.R. § 21.2(a)(2) (1987). Since, Sinclair's protest was not filed with our Office until June 15, 22 working days after it knew about the GSA conduct to which it objected, its protest was untimely.

In its request for reconsideration, Sinclair, a small business firm, argues that we should consider the merits of its protest, notwithstanding its untimely filing, under the significant issue exception of our Bid Protest Regulations, 4 C.F.R. § 21.2(c). Sinclair argues that it was prevented from competing for this procurement because GSA changed its renewal process of the past 5 fiscal years for this contract by not specifically notifying it that the contract would not be renewed. In effect, Sinclair contends that GSA owes a duty to small business incumbent contractors to directly notify them of solicitations being issued. Sinclair states it does not have the resources to have an employee monitor the CBD, as do larger firms, for solicitation announcements.

In order to assure that small business firms such as Sinclair are being treated fairly by GSA, we have considered the merits of the protest, and we deny the protest.

As noted above, Sinclair contends that beginning in 1982 it was awarded contracts with renewal provisions which GSA exercised. As to recent years, Sinclair was awarded a contract in 1985 for fiscal year 1986 under Group 58, Federal Supply Schedule (FSS). The contract provided for two 1 year renewals at the option of the government. As noted earlier, GSA renewed for fiscal year 1987 but did not renew for fiscal year 1988, instead issuing the instant solicitation. Sinclair contends that it relied to its detriment on what it terms was GSA's prior practice of sending renewal notices to Sinclair.

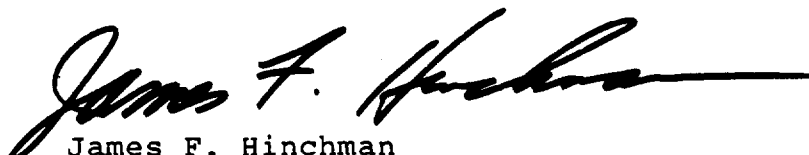
Instead of renewing the fiscal 1988 contract, the solicitation was synopsisized in the Commerce Business Daily (CBD) on February 4, 1987, and again on February 23, 1987, to make a minor correction. The notice provided that the solicitation would be issued on March 10, 1987, with a closing date of April 23, 1987. GSA's records show that it mailed the solicitation to 177 firms on the bidder's list, including Sinclair, at its proper address. More than half of the firms which were mailed the solicitation submitted offers for the multiple award contract.

GSA reports that there is no standard practice of renewing contracts since each decision to renew, like the exercise of an option, is within the discretion of the agency. Since GSA had determined not to renew the contracts under this schedule, but receive new bids, it contends that there was no reason or procedure for GSA to contact Sinclair. Moreover, GSA points out that Sinclair was awarded a similar contract for fiscal year 1984, which GSA renewed for fiscal year 1985, but did not renew for fiscal year 1986. However, Sinclair did submit a timely offer for fiscal year 1986, which resulted in a contract. Finally, GSA notes that although Sinclair does not have a schedule contract for fiscal year 1988, it is not precluded from selling to the government as the schedule contracts involved here are not mandatory and government agencies utilize their own mailing lists and CBD announcements when acquiring communication equipment.

While our Office has recognized that the Competition in Contracting Act of 1984 (41 U.S.C. § 253(a)(1)(A) (Supp. III 1985)) requires agencies to obtain full and open competition, we have also found that an agency has satisfied the requirement for competition when it makes a diligent, good faith effort to comply with the statutory and regulatory requirements regarding notice of the procurement and distribution of solicitation materials and it obtains a reasonable price. The fact that all possible bidders or offerors do not compete does not require corrective action. NRC Data Systems, B-222912, July 18, 1986, 86-2 C.P.D. ¶ 84.

Here, we find GSA has satisfied this standard. GSA complied with the synopsis requirements and sent the solicitation to all bidders on its bidders mailing list, including Sinclair, in accordance with its standard practice. The fact that Sinclair's prior contract contained a renewal clause conferred no greater obligation on GSA to contact Sinclair. To require more than was done here by GSA, which awards dozens of multiple award contracts, involving hundreds of contractors, would be impracticable.

The protest is denied.


James F. Hinchman
General Counsel